

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

<i>In the Matter of:</i> Santa Monica Post Office Santa Monica, California 90401	Docket No. A2013-1
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**REQUEST OF THE CITY OF SANTA MONICA TO INTERVENE
AND PARTICIPATE IN APPEAL OF CONGRESSMAN WAXMAN**
(November 6, 2012)

Pursuant to 39 CFR 3025.14 of the Commission's Rules, and for the reasons detailed below, the City of Santa Monica ("City") hereby seeks to intervene and participate in Congressman Henry A. Waxman's appeal ("appeal") of the United States Postal Service ("USPS") August 17, 2012 decision ("Decision") to approve the closure of the Santa Monica Post Office located at 1248 5th Street ("5th Street Post Office") and the consolidation of its operations at the Santa Monica Carrier Annex located at 1653 7th Street ("Annex Building"). This Decision must be reversed as the USPS failed to proceed in the manner required by Federal law in rendering its decision. Since the 5th Street Post Office is located in the City and its closure and consolidation has significant adverse impacts on the City's residents and business community, and the City itself is a customer served by the 5th Street Post Office, the City is authorized to intervene and participate in this proceeding.¹

¹ The City also joins in Congressman Waxman's request that the Commission suspend any effort to close the 5th Street Post Office while this matter is pending.

Despite the USPS's characterization of the Decision as a "relocation," in its efforts to avoid the statutory mandates of 39 U.S.C. §404(d), the Decision clearly results in closure or consolidation of the 5th Street Post Office. In challenging the USPS's actions, the City recognizes that the USPS has the power to "determine the need for post offices, postal and training facilities and equipment, and to provide such offices, facilities, and equipment as it determines are needed." 39 U.S.C. §404(a)(3). However, this power must be exercised in accordance with the procedures established by this law. *Id.* This USPS failed to do, since it neither followed the procedures for closing or consolidating the 5th Street Post Office set forth in §404(d) nor made the requisite findings under that section. This Commission is required to set aside any determination, findings, and conclusions of the USPS to close or consolidate any post office that are found to be: **"(A)** arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law; **(B)** without observance of procedure required by law; or **(C)** unsupported by substantial evidence on the record." 39 U.S.C. §404(d)(5). Given the USPS's disregard of its statutory obligations, this Commission must set aside the Decision.

The USPS readily admits both in the Decision and in documents it subsequently filed with this Commission that it neither followed the procedures nor made the findings required by §404. As stated, it seeks to avoid the consequences of this failure by improperly characterizing the closure of the 5th Street Post Office as a mere "relocation." Had the USPS's action been a mere "relocation," different procedural requirements would have been triggered. *See* 39 C.F.R. §241.4.² However, given the complete cessation of all postal operations at this facility and the USPS's stated

² The City also challenged the decision to close the 5th Street Post Office under the procedures set forth at 39 C.F.R. §241.4 while preserving its argument that the §241.4 procedures do not apply. Among its challenges, the City contended that the USPS also failed to follow the §241.4 procedures. In his October 4, 2012 decision rejecting the City's challenge, the Vice President of Facilities failed to address these procedural irregularities and declared that no further administrative or judicial review is available to the City despite the USPS's clear failure to proceed in a manner prescribed by law.

intention to sell this building, the USPS's characterization is plainly erroneous and, as detailed below, counter to established case law.

For instance, in *Knapp v. United States Postal Service*, 449 F.Supp. 158 (E.D. Mich. 1978), plaintiffs challenged the USPS's decision to transfer certain bulk and other sorting operations from certain postal facilities to other facilities without complying with §404(b). In rejecting this challenge, the court explained that: "[c]losing thus refers to the complete elimination of the post office. 'Consolidation,' while more difficult to describe, certainly has the characteristic of subordinating the day to day overall management of one office having a postmaster to the administrative personnel of another office." *Id.* at 162. The court thus found that this change did not constitute a closing or consolidation since "due to the continuation of all postal services rendered to the public at each of the post offices in question, the public would not know whether the bulk mail sorting operations were being performed at the post office as was the case, were being transferred to a different facility, or were even being performed on a train enroute to the destination of the mail being sorted as such services were once performed." *Id.*

Similarly, in *Wilson v. United States Postal Service*, 441 F.Supp. 803 (C.D. Cal. 1977), plaintiffs challenged the transfer of certain mail processing functions to a central facility from twenty-six local post offices contending that a consolidation had occurred triggering Section 404(b) requirements. The court found that this section's requirements were not triggered. However, the court's reasoning is telling. "In this instance, public services will at the very least remain substantially the same. All of the local post offices in question will remain in existence; the postmasters and most of the postal employees will retain their positions; letter carriers will sort and arrange the items for delivery within their own routes, as before; the public can still purchase

stamps and money orders, and register, certify or insure their mail." *Id.* at 805. *See also Citizens for the Hopkins Post Office v. United States Postal Service*, 830 F.Supp. 296, 299-300 (D. S.C. 1993) (transfer of mail-casing operation did not constitute a consolidation since post remained in existence and public could still obtain all services previously obtained); *Hall v. United States Postal Service*, 2010 WL 4026128 (N.D. Ohio 2010) (transfer of casing operations and some, but not all employees does not constitute a consolidation since subject post office would remain open for retail services)³

As discussed, the procedures and standards that the USPS must follow when closing or consolidating a facility are dramatically different than when the USPS is merely relocating a facility. For instance, when closing or consolidating a post office, the USPS must "provide adequate notice of its intention to close or consolidate such post office at least 60 days prior to the proposed date of such closing or consolidation to persons served by such post office to ensure that such persons will have an opportunity to present their views." 39 U.S.C. §404(d)(1). In deciding whether to close or consolidate a post office, among other findings, the USPS must consider:

³ In asserting that this Commission lacks jurisdiction in this matter since it is not a closure or consolidation, but is instead a relocation, both the USPS and the Public Representative rely on prior decisions of this Commission. However, neither USPS nor the Public Representative addresses the significant body of case law which supports the opposite conclusion. Additionally, the Commission decisions that they rely upon are factually distinguishable from the case at bar.

Moreover, the USPS is not unaware of these contrary judicial decisions. When responding to comments received on USPS's proposed changes to its regulations in 2011, USPS acknowledged certain of these judicial decisions, but characterized them as dated. *See* 76 FR 66184. With this the City disagrees. Moreover, while the City agrees with USPS that construction of a statute by the agency charged with administering is entitled to considerable deference, that construction must be reasonable. *See Citizens for the Hopkins Post Office*, 830 F. Supp. at 298-99. "A court is not obligated to accept every interpretation offered by an administering agency, because courts remain the ultimate arbiters on issues of statutory construction. This court will accord an agency's interpretation the deference to which it is entitled, but it will not abrogate its responsibility to deny an interpretation which is inconsistent with a statutory mandate or which would frustrate the congressional policy underlying the statute." *Id.* (citations omitted). It is unreasonable to construe §404 not to encompass the circumstances here -- the termination of all services at the 5th Street Post Office and the sale of that property.

- (i) the effect of such closing or consolidation on the community served by such post office;
 - (ii) the effect of such closing or consolidation on employees of the Postal Service employed at such office;
 - (iii) the economic savings to the Postal Service from such closing or consolidation; and
 - (iv) such other factors as the Postal Service determines are necessary.
- 39 U.S.C. §404(d)(2)(A).

The Decision does not address these factors, and as such, it cannot stand. Indeed, had the USPS properly assessed the evidence in light of the requisite findings, its conclusion would have been dramatically different. The 5th Street Post Office is located in the heart of Santa Monica's Downtown in a highly accessible location. The proposal to close the 5th Street Post Office and consolidate its operations at the Annex would place retail services in a more remote area with inconvenient access. Closing the Downtown location and consolidating service at the Annex building would have a particularly adverse effect upon seniors and the transit dependent.

- Walking: Thousands of people can easily walk to the current 5th Street Post Office since it is central to a densely populated area of residents, employees and visitors. The 7th Street location is nearly ¾ of a mile away, a challenge for people with mobility limitations. The remote location of the Annex in an industrial area also lacks "eyes on the street" which presents concerns for pedestrians, particularly for the elderly.

- Transit: The 5th Street location is well-served by multiple and frequent local and regional bus lines that provide service within a block of the 5th Street post office. The USPS response, dated October 1, 2012, contains a factual error in defense of the transit service to the Annex by stating that the Annex is accessible by public transit since “a bus station is directly across the street.” The facility across the street is a bus maintenance facility. There is no service to the public provided from this facility, and the fact that it is a maintenance facility serves as an indication of the industrial nature of the area.
- Driving: The Annex site is surrounded by infrastructure constraints that will lengthen vehicle trips, add to downtown congestion and make access inconvenient for patrons driving to the post office. The Annex building is cut off by I-10 freeway to the south, is located across the street from the Big Blue Bus Maintenance Facility/Bus Yard to the west, and bordered by the future at-grade light rail line to the north, which will operate on Colorado and is slated to cross 7th Street every 2 ½ minutes during the peak hours.

The Santa Monica City Council has adopted a citywide policy direction to create walkable and complete neighborhoods where the needs of daily life are within walking distance in order to promote public health and to reduce vehicle emissions and traffic congestion. These daily needs include the post office, particularly because many Santa Monicans visit the site daily to retrieve mail in the post office boxes. Closure of the 5th Street Post Office conflicts with local policy and obstructs achievement of statewide air quality and public health goals.

Additionally, the 5th Street Post Office is a historic resource that should stay in public ownership with full public access. Built in 1939 as part of the Works Progress

Administration, the original murals depict the history of coastal Santa Monica and are an integral part of the community. As a public monument and gathering place, the building should continue its civic function and remain open as a postal office to preserve both its civic and historic features. While recognizing that the 5th Street Post Office is a historic resource, the USPS has failed to articulate how it has complied with Section 106 of the general provisions of the National Historic Preservation Act, 16 U.S.C 470, *et seq.*, Executive Order 12072, and Executive Order 13006.⁴ The USPS owes the public such an explanation.

On August 14, 2012, the Santa Monica City Council unanimously voted that the 5th Street Post Office remain open to the public and continue to provide retail and mail services. The City maintains that the 5th Street Post Office, essential to the City's identity and operation, should remain open to the public with its current function as a postal facility, and that the building should not be closed and sold. Postal services should not be consolidated with the Annex building because it would have major adverse effect on our community and on the postal customers, particularly seniors and transit dependent people. The building should remain in postal service ownership to protect its historic character and civic function.

The City well-understands that the USPS has broad authority in postal management. And, the City understands the economic exigencies of the moment. However, neither consideration empowers the USPS to ignore its obligation to proceed in accordance with mandatory procedural requirements. The government cannot ignore the law. The USPS has clearly done just that in the case at bar. For all these

⁴ As also discussed in Congressman Waxman's appeal, USPS entirely failed to disclose to the community information about the economic savings resulting from the closing and consolidation. *See Appeal*, p. 2.

reasons, the Commission should set aside the Decision and order that the entire matter be returned to the USPS for further consideration as required by 39 U.S.C. §404(d).

Respectfully submitted,

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